

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-051861

11/25/2009

HONORABLE ROBERT BUDOFF

CLERK OF THE COURT

L. Carlson

Deputy

AMERICAN NATIONAL BANK

FREDERICK E DAVIDSON

v.

JOHN NICHOLAS VATISTAS, et al.

DENNIS I WILENCHIK

**RULING**

This matter was taken under advisement after Oral Argument on November 23, 2009, on Defendants' Motion for Partial Summary Judgment filed August 26, 2009. The matter was fully briefed and argued. The Court has now considered all of the matters presented, including, but not limited to, pleadings of the parties, arguments presented and the applicable statutory provisions and case law.

Based upon those matters presented,

IT IS ORDERED granting Defendants' Motion for Partial Summary Judgment as to Plaintiff's first claim of relief which is entitled "Foreclosure-Breach of Contract". In this cause of action, Plaintiff is attempting to collect a deficiency judgment against Defendants.

The Court finds there is no genuine issue of material fact and that Defendants Vatisas are entitled to summary judgment as to this claim for relief as a matter of law.

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In making this decision the Court determines that the case of Bank One v. Beauvais, 188 Ariz. 245, 934 P.2d 809 (1997) is controlling. The note and deed of trust executed by Vatistas in favor of Plaintiff on April 24, 2009, was a refinance with a new note secured by a deed of trust of an August 2006 obligation to Scottsdale Private Bank, a division of Mid First Bank. The August 2006 transaction was the result of the Vatistas' purchase of the residence at 3303 N. Manor Dr. East, Phoenix AZ, a single family home located on 2.33 acres. The new note and deed of trust of April 24, 2008, in favor of American National Bank secured the same property.

Under the holding in Beauvais, "cancellation and replacement with new notes, secured by the same property, transfers purchase money status to the new notes." This Court therefore determines that A.R.S. 33-729.A is applicable and Plaintiff is not entitled to seek a deficiency judgment after judicial foreclosure.

Pursuant to Rule 54(b) of the Rules of Civil Procedure, the Court finds there is no just reason for delay and therefore judgment is entered.

IT IS FURTHER ORDERED signing this minute entry as an order of the Court.

/ s / HONORABLE ROBERT BUDOFF

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JUDICIAL OFFICER OF THE SUPERIOR COURT